



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 12, 1998

Ms. Ruth Griffen
Chairman, Board of Commissioners
Housing Authority of the City of Edna
P.O. Box 698
603 N. Kleas St.
Edna, Texas 77957

OR98-0441

Dear Ms. Griffen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112499.

The Housing Authority of the City of Edna (the "authority") received a request for "copies of all information sent to the Attorney General's Office of the State of Texas and the Department of Housing and Urban Development which was approved by the Housing Authority of the City of Edna, Texas Commissioners on the agenda on October 9, 1997 and November 5, 1997." You assert that the information is excepted from disclosure pursuant to sections 552.103 and 552.107 of the Government Code. We have considered your arguments and have reviewed the information submitted.¹

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the governing body is or may be a party. The governing body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.);

¹We note the authority received the request for information on November 13, 1997. Therefore, the only documents implicated by this request are those that were submitted to this office before that date. A governmental body need not comply with a standing request to provide information "on a periodic basis," Open Records Decision No. 465 (1987); or on a weekly basis, Open Records Decision No. 476 (1987); or to treat a request as embracing information prepared after the request was made, or to inform the requestor subsequently when the information does come into existence, Open Records Decision No. 452 (1986).

Open Records Decision No. 551 (1990) at 4. The governing body must meet both prongs of this test for information to be excepted under section 552.103(a).

You have submitted to this office a petition that was filed against the authority on January 23, 1998 in District Court in Jackson County, Texas, Cause No. 98-1-10941. On this basis, we conclude the authority has met the first prong of the test for establishing an exception to disclosure under section 552.103(a). Upon review of the submitted information, we conclude that it is related to the pending litigation, and therefore may be withheld from disclosure under section 552.103(a). However, we note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

As we resolve your request under section 552.103(a), we need not address your argument under section 552.107.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 112499

Enclosures: Marked documents/submitted documents

cc: Mr. Oscar Hinojosa
P.O. Box 445
Ganado, Texas 77962-0445
(w/o enclosures)